

**REMARKS**

Claims 1-5, 7-20 are pending in this Application with Claims 1, 11 being amended, with Claim 6 canceled and Claim 21 added. No new matter is added by way of these amendments, and the amendments are supported throughout the Specification and the drawings. Reconsideration of Claims 1-5, 7-21 is respectfully requested.

**Applicant's Request for Examiner to Withdraw the "Final" Status**

The Official Action dated December 28, 2005 was made FINAL despite citing new grounds of rejection (i.e. U.S. Patent No. 4,741,051 to Bible). It appears that the "Final" status may have been a mistake, but the Applicant must address this issue. The Bible reference was not cited in any of the prior Office Actions. Furthermore, the Bible reference is used to reject independent Claim 11 which has never even been amended. Furthermore, independent Claim 1 was only amended to remove an element from the claim. A "Final" rejection of independent Claim 11 is improper since no amendments have ever been made to independent Claim 11 and the Bible reference has never been cited before. MPEP §706.07 specifically states that the examiner may withdraw final rejection if convinced that it was premature.

MPEP 706.07 specifically requires that "[b]efore final action is in order a clear issue should be developed between the examiner and the applicant." MPEP 706.07 further states "present practice does not sanction hasty and ill-considered final rejections." MPEP 706.07 further states that "[t]he examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal."

The Applicant respectfully submits that the Applicant has not received a "full and fair hearing". The Applicant further submits that there has not been a "clear issue" between the applicant and the examiner. The Examiner is now citing U.S. Patent No. 4,741,051 (Bible) as new prior art which was not referenced in the prior Official Actions. Hence, there has not been a

full and fair hearing, much less a clear issue developed. The Applicant respectfully requests that the FINAL action be withdrawn.

In addition, the Office Action does not state why the new ground for rejection was presented. In particular, MPEP §706.07(a) specifically states an "... action on the merits in any application . . . **will not be made final if it includes a rejection, on newly cited art . . . of any claim not amended** by the applicant or patent owner **in spite of the fact that other claims may have been amended to require newly cited art.**" (emphasis added) The Examiner used the newly cited patent to reject Claims 1-20. It is respectfully submitted to the Examiner that Claims 11-20 have never been amended. Hence, pursuant to MPEP §706.07(a), the FINAL action must be withdrawn and made non-final. Pursuant to the above-stated facts and legal arguments, the Applicant respectfully requests that the FINAL action be withdrawn and made **NON-FINAL**.

#### **Paragraph 1 of the Official Action**

Claim 1 has been amended in accordance with the Examiner's helpful suggestion to correct the antecedent basis issue for "said upper end." The Applicant has also made some additional antecedent basis corrections in independent Claim 1 and Claim 11 which do not relate to the patentability of the invention.

#### **Paragraph 2 of the Official Action**

The Office Action rejected Claims 1-5, 7-10, 11-15 and 17-20 under 35 U.S.C. §102(b) as being anticipated by Bible (U.S. Patent No. 4,741,051). The Applicant respectfully disagrees with this rejection. The Applicant further incorporates by reference the prior arguments made in the previous responses by the Applicant.

Independent Claim 1 has the following features:

1. (Currently Amended) A medical arm securing device for securing the arms of an immobile patient, comprising:
  - a main member;
  - a first slot** extending into an upper portion of said main member;

**a second slot** extending into said upper portion of said main member, wherein said slots receive the wrists of an immobile patient; and

**a plurality of notches** extending into a front end and a rear end of said main member to receive a band member.

Independent Claim 11 has the following features:

11. (Currently Amended) A medical arm securing device for securing the arms of an immobile patient, comprising:

a main member;

**a first slot** extending into an upper portion of said main member;

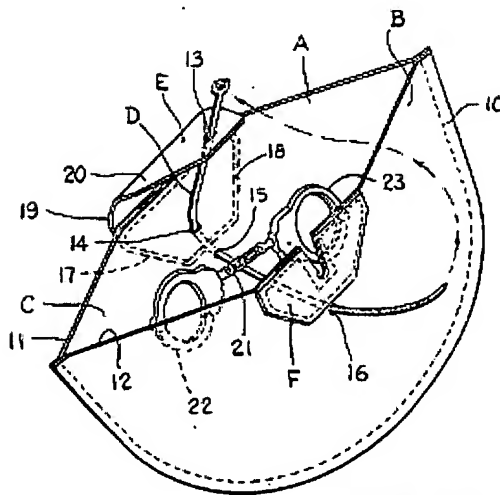
**a second slot** extending into said upper portion of said main member, wherein said slots receive the wrists of an immobile patient;

**a plurality of notches** on opposing ends of said main member; and

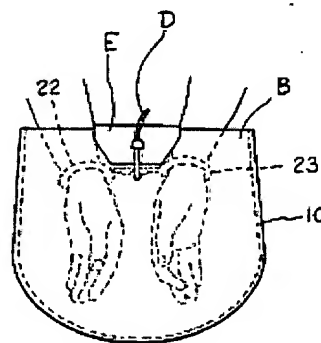
**a band member** positionable within selected said notches.

Bible merely teaches a “protective mitt for use with handcuffs”. In particular, Bible merely teaches:

A pair of opposed fabric wall panels A and B [that] are secured about edge portions leaving an open top C for insertion of the hands and wrists **with the handcuff carried thereon**. The fabric wall panels form **a pouch containing the hands, wrists and the handcuffs**. (Starting Column 1, Line 66 continuing to Column 2, Line 2.)



**Fig. 1.**



**Fig. 2.**

U.S. Patent No. 4,741,051 (Bible)

The Applicant respectfully submits that Bible does not teach “a first slot” and “a second slot extending into said upper portion of said main member” as claimed in both independent Claims 1 and 11 of the present application. This is significant for the present invention since two slots are required to adequately receive and secure the wrists of the immobile patient. (See Figure 6 of the application.) Bible simply is missing this important feature of the present invention. Bible at best teaches a single slot (there can’t be more than one slot because Bible is to receive the “wrists with the handcuff carried thereon.” Having two slots in Bible would not be feasible and would not work since the entire purpose of invention in Bible is to receive the wrists along with the handcuffs attached (handcuffs cannot be attached within the pouch of Bible).

In addition, Bible does not teach “a plurality of notches” in the opposing ends of a main member to receive “a band member.” This is another significant feature of the present invention that allows for the attending medical personnel to secure both wrists in the pair of slots by extending the band member in the notches resulting in the band member extending over the pair of slots to prevent removal of the wrists. In Bible, even if the “tie” that extends through the “openings 12, 14, 15” were considered an equivalent of the band member, the tie in Bible is not used to secure individual wrists ... the tie in Bible is for securing the handcuffs in the pouch by engaging the chain and not the wrists. (*“The tie passes beneath the central chain portion 21 of the handcuffs which connects the separate cuff portion 22 and 23.”*)

With respect to dependent Claims 2-5, 7-10, 12-15, 17-20, the Applicant further states that Bible does not disclose nor suggest the following significant features of the present invention (and the Office Action has not addressed many of these dependent claims and their respective features):

- “wherein said slots are **substantially parallel to one another**” (Claims 2, 12).
- “wherein said slots form a **first arm, a second arm and a third arm**” (Claims 3, 13).
- “wherein said arms are substantially parallel to one another” (Claims 4, 14).
- “wherein said main member has a **rear portion that is positionable adjacent to an immobile patient**” (Claims 5, 15).

- “a securing slot extending into a lower portion of said main member for removably receiving a strap” (Claims 7, 17).
- “a cutout at an inner end of said securing slot” (Claims 8, 18).
- “wherein said securing slot is straight and extends into said main member at an angle” (Claims 9, 19).
- “wherein said main member with said slots has an E-shape” (Claims 10, 20).

If another rejection is sent by the Examiner, these dependent claims must also be addressed individually since many have not been addressed.

The Applicant respectfully submits that Bible does not qualify as appropriate prior art under 35 U.S.C. §102(b) as Bible does not disclose (expressly or inherently) all of the features of independent Claims 1, 11. Therefore, Applicant respectfully submits that independent Claims 1, 11 are patentable over the cited reference for at least these reasons. Accordingly, Applicant respectfully requests that the Examiner withdraw the outstanding rejection as applied to independent Claims 1, 11, since the application is in condition for allowance.

### **Paragraph 3 of the Official Action**

The Office Action rejected Claims 6, 16 under 35 U.S.C. §103(a) as being unpatentable over Bible. Claims 6, 16 are directed to a non-porous material which is not suggested by Bible. In fact, Bible teaches away from the usage of a non-porous material (“Preferably the mitt is constructed of a non-woven fabric which is bulky but which provides air flow therethrough.” Column 1, Lines 22-24.) Claim 6 has been canceled.

### **Added Claim 21**

The Applicant has added independent Claim 21 which incorporates the features of independent Claim 11 along with dependent Claims 12-20. Independent Claim 21 has the following significant features:

21. (New) A medical arm securing device for securing the arms of an immobile patient, comprising:  
    **a main member;**

**a first slot** extending into an upper portion of said main member;  
**a second slot** extending into said upper portion of said main member, wherein said slots receive the wrists of an immobile patient;  
**a plurality of notches** on opposing ends of said main member;  
**a band member** positionable within selected said notches.  
**wherein said slots are substantially parallel to one another;**  
**wherein said slots form a first arm, a second arm and a third arm within said main member;**  
**wherein said arms are substantially parallel** to one another;  
**wherein said main member has a rear portion** that is positionable adjacent an immobile patient;  
**wherein said main member is comprised of a non-porous material;**  
**a securing slot** extending into a lower portion of said main member for removably receiving a strap; and  
**a cutout** at an inner end of said securing slot;  
**wherein said securing slot is straight and extends into said main member at an angle;**  
**wherein said main member with said slots has an E-shape.**

The Applicant respectfully submits that independent Claim 21 is also in condition for allowance.

In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited. Should the Examiner consider necessary or desirable any formal changes anywhere in the specification, claims and/or drawing, then it is respectfully asked that such changes be made by Examiner's Amendment, if the Examiner feels this would facilitate passage of the case to issuance. Alternatively should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, they are invited to telephone the undersigned.

Respectfully submitted,



Michael S. Neustel (Reg. No. 41,221)  
NEUSTEL LAW OFFICES, Ltd.  
2534 South University Drive, Suite No. 4  
Fargo, North Dakota 58103

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Date

Telephone: (701) 281-8822  
Facsimile: (701) 237-0544  
e-mail: [neustel@patent-ideas.com](mailto:neustel@patent-ideas.com)